

Amendments to the Drawings

The attached drawing sheets, which include new Figs. 6 through 8, are intended to be added to the existing drawings, and are not intended to replace any drawings previously filed.

Attachment:           New sheets

Response

The drawings, specification, and claims were amended in accordance with the amendments above. The amendments are being made to clarify the invention, and to focus the claims on those aspects of the invention which are a commercial priority to the Applicant. The amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

In the Office Action dated 11/23/2005, the drawings were objected to for failing to show every feature of the invention specified in the claims. Applicant notes that several of the previously explicitly claimed features specified in the Office Action (e.g., “the face being textured similar to the related object,” “the openable cavity with removable item,” “the article being reversible,” and “the article combined with a pillow or backpack”) were recited in claims that have been canceled by the present amendment. The portion of the objection relating to those features is therefore rendered moot. Nevertheless, the cancellation of such claims should not be read as a disclaimer of such subject matter, as each of the present claims may still read on embodiments that have such features, in addition to the features explicitly recited in the present claims.

Applicant further notes that the drawings have been amended to show the head of the figurine being hollow and the figurine positioned in the head (new Fig. 8), the face being a caricature (new Fig. 6), and the voice signal technology (new Fig. 7). These new figures are fully supported by the original specification, drawings and claims, such that no new matter is believed or intended to be involved. These new figures are also in compliance with 37 CFR §1.83(a), including the sentence of that section permitting conventional features whose detailed illustration is not essential for a proper understanding of the invention, such as the presently claimed voice signaling technology, to be illustrated as a simple box. Of course, while Applicant submits that voice signaling technology is such “conventional technology” in and of itself, this should not be construed as an admission that incorporation of the same into the claimed invention is conventional. Indeed, Applicant submits that the incorporation of voice signaling technology into the presently claimed invention is novel and non-obvious. In view of the foregoing, Applicant respectfully requests that the objection to the drawings be withdrawn.

In the Office Action dated 11/23/2005, the specification was objected to for a typographical informality on page 8, lines 14-15. The specification has been amended to correct such informality, in addition to other typographical errors. The specification has also been amended to refer to the new drawings (Figs. 6-8) added by the present amendment. These amendments to the specification are fully supported by the original specification, drawings, and claims, such that no new matter is believed or intended to be involved. In view of the foregoing, Applicant respectfully requests that the objection to the specification be withdrawn.

Claim 21 was objected to under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 has been canceled by the present amendments. The objection is therefore moot. Applicant further submit that each of the presently amended claims is in compliance with 35 U.S.C. §112. Applicant therefore respectfully requests that the objection to the claim be withdrawn.

Claims 9-11, 15, 17-18, and 21 were rejected under 35 USC §102(b) as being anticipated by Nelson (US 5,511,685). Claims 9, 12-14, 16, 19, 20, and 22 were rejected under 35 USC §103(a) as being unpatentable over Cash (US 6,517,406) in view of Burton (D394,479), and further in view of Official Notice. In view of the amendments made herein, Applicant respectfully traverses these rejections.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131 (emphasis added).

Applicant further notes that under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. A *prima facie* case of obviousness also requires that there be some

teaching, suggestion, or motivation to modify the references either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP 2143.01.

Applicant notes that the art of record fails to teach or suggest all of the limitations recited in each amended independent claim, particularly in the arrangement required by each of the claims.

The combined art of record fails to teach each and every element recited in amended independent claim 22 in as complete detail as recited in the claim, and in the arrangement required by the claim. For instance, and without limitation, the art of record fails to teach or suggest a stand, wherein a combination of the three-dimensional representation of the ball and a three-dimensional representation of the face is configured to fit on the stand, wherein the stand is associated with a sport from which a famous athlete is associated, wherein the stand comprises a three-dimensional representation of one or both of: (i) an article used by the famous athlete in the sport from which the famous athlete is associated, or (ii) a venue at which the famous athlete plays the sport from which the famous athlete is associated, as recited in amended claim 22. In short, the art of record, even in combination, fails to teach or suggest each and every element and limitation recited in amended independent claim 22 in accordance with MPEP 2131 and/or 2143.03. Accordingly, the combined art of record fails to anticipate or render obvious amended claim 22. In view of the foregoing, Applicant respectfully requests that the rejection be withdrawn.

Similarly, the combined art of record fails to teach each and every element recited in amended independent claim 38 in as complete detail as recited in the claim, and in the arrangement required by the claim. For instance, and without limitation, the art of record fails to teach or suggest a three-dimensional representation of the face of a famous person defined by a continuous facial surface, and a three-dimensional representation of an article of fame associated with the famous person defined by a continuous article surface, wherein the continuous facial

surface is integral with the continuous article surface such that the three-dimensional representation of the article of fame continues from the three-dimensional representation of the face of the famous person to form the remainder of the head of the famous person, and wherein the continuous facial surface extends beyond the continuous article surface, as recited in amended claim 38. In short, the art of record, even in combination, fails to teach or suggest each and every element and limitation recited in amended independent claim 38 in accordance with MPEP 2131 and/or 2143.03. Accordingly, the combined art of record fails to anticipate or render obvious amended claim 38. In view of the foregoing, Applicant respectfully requests that the rejection be withdrawn.

The combined art of record also fails to teach each and every element recited in amended independent claim 41 in as complete detail as recited in the claim, and in the arrangement required by the claim. For instance, and without limitation, the art of record fails to teach or suggest a three-dimensional representation of the body of a famous person, wherein the three-dimensional representation of the body of the famous person is configured to fit within the hollow portion of a combination of the three-dimensional representation of the face of the famous person and a three-dimensional representation of an article of fame associated with the famous person, as recited in amended claim 41. In short, the art of record, even in combination, fails to teach or suggest each and every element and limitation recited in amended independent claim 41 in accordance with MPEP 2131 and/or 2143.03. Accordingly, the combined art of record fails to anticipate or render obvious amended claim 41. In view of the foregoing, Applicant respectfully requests that the rejection be withdrawn.

Furthermore, even if the combined art of record taught or suggested all of the elements of any of the amended independent claims, the art is devoid of any suggestion or motivation to modify or combine the teachings of the references in order to obtain the claimed invention. Indeed, MPEP 2143.01 admonishes that “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” (emphasis in original). *Actual evidence* of a suggestion, teaching or motivation to combine prior art references must be shown. *In re Dembiczak*, 50 USPQ2d 1614 (Fed.Cir. 1999). Broad *conclusory statements* regarding the teaching of

references, standing alone, simply *are not evidence*. *Id.* In short, the Office Action fails to provide the requisite *evidence* in the prior art suggesting the desirability of the combinations claimed herein, but instead relies solely on conclusory statements and impermissible hindsight reconstruction. Because the motivation required by MPEP 2143.01 is lacking, Applicant respectfully requests that the rejections be withdrawn.

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty and non-obviousness.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant submits that all pending claims overcome the rejections presented in the Office Action, and respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or remarks made herein, the Applicant invites the Examiner to contact the undersigned via telephone at (513)369-4811 or via e-mail at [aulmer@fbtlaw.com](mailto:aulmer@fbtlaw.com).

Respectfully Submitted,

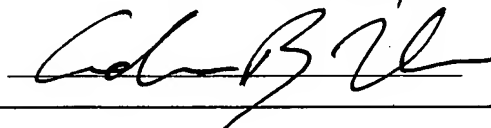


Andrew B. Ulmer (Reg. No. 57,003)  
Frost Brown Todd LLC  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202-4182  
513-396-4811 (direct)  
513-651-6981 (fax)

Attachment : (Three) New Drawing Sheets

**Certificate of Mailing**

The undersigned certifies that this correspondence was deposited with the U.S. Postal Service with sufficient postage as first class mail and addressed to "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on this 21<sup>st</sup> day of February, 2006.



CinLibrary 0103281.0515640 1608023v.1